



July 21, 2000

Mr. Wiley B. McAfee
Police Legal Adviser
City of Irving
Police Department
P.O. Box 152288
Irving, Texas 75015-2288

OR2000-2753

Dear Mr. McAfee:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 137317.

The Irving Police Department (the "department") received a request for complaints involving a named individual from January, 1995, to the present. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Because a finding that you may withhold the information under section 552.108 would include a requirement that you must release the basic information relating to any responsive complaints or incident reports, we first consider whether the requested information may be excepted from required public disclosure under Section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Under the authority of *United States Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989), when an individual's criminal history information has been compiled or summarized by a governmental entity, the information takes on a character that implicates the individual's right of privacy in a manner that the same records in an uncompiled state do not. Thus, when a requestor asks for all information concerning a certain named individual and that individual is a possible suspect, a law enforcement agency must withhold this information under section 552.101 because that individual's privacy right has been implicated. *See id.* We find that the requestor seeks criminal records as contemplated by the court in *Reporters Committee*. Therefore, the department must withhold, under the common law privacy principles set out in that case, any information responsive to the request in which the individual in question is treated as a suspect, arrestee, or defendant.

Because we find section 552.101, in conjunction with the *Reporters Committee* decision, to be dispositive, we do not address your section 552.108 claim. This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us;

therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Patricia Michels Anderson
Assistant Attorney General
Open Records Division

PMA/pr

Ref: ID# 137317

Encl. Submitted documents

cc: Ms. Lois McLemore
1819 Parkland
Grapevine, Texas 76051
(w/o enclosures)